

## EXHIBIT 3



United States Department of

**DELIBERATIVE, PRE-DECISIONAL, FOR INTERNAL COORDINATION ONLY**

**Topic:** Council on Environmental Quality Categorical Exclusion Guidance

**Date:** September 30, 2020

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**Issue Summary:** In substantiating the new and expanded CEs in its NEPA rulemaking, the Forest Service relied on the process outlined in CEQ's 2010 guidance document, "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act."

**Key Points:**

- CEQ states in its final rule that it will provide notice in the Federal Register listing withdrawn guidance and that it will issue updated or new guidance consistent with Presidential directives. The Forest Service anticipates that CEQ's 2010 CE guidance will be withdrawn.
- However, CEQ's 2010 CE guidance was in effect during much of the development of the CEs in the FS final rule, is still in effect as of the date of this briefing paper, and outlines a process for establishing CEs that is logically sound.
- During CEQ's Federal NEPA Contacts meeting on August 27, 2020, it explained that agencies developing new CEs should adhere to recent agency practice in doing so. The Forest Service is following the process it used in 2013 to substantiate a series of soil and water restoration CEs.
- Per 40 CFR 1507.3, CEQ has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020 are consistent with the revised CEQ regulations. Prior to the Forest Service publishing a final rule, it must receive a determination from CEQ that the final rule is in conformity with NEPA and CEQ's regulations. This conformity determination will be included in the administrative record for the rule.



Forest Service